

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA

David Hightower,
#99695-020

Petitioner,

vs.

Warden Dunbar,

Respondent.

) C/A No.4:21-cv-04155-MGL-TER

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ORDER

This is an action filed by a federal prisoner. This case is before the Court due to Petitioner's failure to comply with the magistrate judge's order to pay the initial filing fee or to apply to proceed *in forma pauperis*.¹ (ECF No. 5). The order was not returned as undeliverable.

The mail in which the Order was sent to Petitioner's provided address has not been returned to the court, thus it is presumed that Petitioner received the Order, but has neglected to comply with the Order within the time permitted under the Order. The Court has not received a response from Petitioner and the time for compliance has passed. A review of the record indicates that the magistrate judge ordered Petitioner to submit items needed to render this case into proper form and specifically informed Petitioner that if he failed to do so, this case would be subject to dismissal.

Petitioner's lack of response to the Order indicates an intent to not prosecute this case, and subjects this case to dismissal. *See* Fed. R. Civ. P. 41(b)(district courts may dismiss an action if a petitioner fails to comply with an order of the court); *see also Ballard v. Carlson*, 882 F.2d 93, 95 (4th Cir. 1989)(dismissal with prejudice appropriate where warning given); *Chandler Leasing Corp. v. Lopez*, 669 F.2d 919, 920 (4th Cir. 1982)(court may dismiss *sua sponte*).

¹ The Fourth Circuit has upheld dismissals for failure to pay the initial filing fee or to apply to proceed *in forma pauperis*. *Cuffee v. Dep't of Corr.*, 757 Fed. Appx. 272 (4th Cir. 2019); *Roudabush v. Mosley*, 736 Fed. Appx. 56 (4th Cir. 2018).

Accordingly, this case is dismissed without prejudice. The Clerk of Court shall close the file.

IT IS SO ORDERED.

Columbia, South Carolina
February 10, 2022

s/Mary Geiger Lewis
The Honorable Mary Geiger Lewis
United States District Judge

NOTICE OF RIGHT TO APPEAL

The parties are hereby notified of the right to appeal this order pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.